

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: LARRY WHITEHEAD LUST NO. N/A UST NO. 198610101	ADMINISTRATIVE CONSENT ORDER NO. 2007-UT-02
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TO: Larry Whitehead
2468 300th Avenue
Sidney, Iowa 51652

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Larry Whitehead enter into this agreement for the purpose of resolving regulatory violations and monetary penalties associated with the ownership and operation of petroleum underground storage tanks (USTS) located at 2470 297th Avenue, Sidney, Iowa. In the interest of avoiding litigation, the parties have agreed to the terms as provided below:

Larry Whitehead is required to pay an administrative penalty of \$2,500 to the order of the Department according to the schedule in Division V below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Matt Rhodes, Thad Nanfite
Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
Ph. 712/243/1934

Relating to legal issues:

David Wornson, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(10) and 455B.476, which authorize the Director to issue any order necessary to secure compliance with the Iowa Code Division IV, Part 8 and Department rules contained in Chapter 567 Iowa Administrative Code (I.A.C.) 135. Iowa Code sections 455B.109 and 455B.476 and agency rules in Chapter 567 I.A.C. 10 authorize the Director to assess administrative penalties up to \$10,000.

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III. STATEMENT OF FACTS

1. Larry Whitehead is registered with the Department as the owner of two 12,000 gallon petroleum underground storage tanks (USTS) located 2470 297th Ave., Sidney, Iowa. He has been the owner of the tanks at all times relevant to this order. Mr. Whitehead is a person in control of and who has responsibility for the daily operations of the UST system.
2. The USTS are equipped with impressed current cathodic protection. The fuel dispensing system is safer-suction and is plumbed to the USTS with bare steel piping. The USTS are equipped with five gallon spill basins and an overfill alarm for spill and overfill protection and are equipped with an EBW Auto Stik Jr. automatic gauge (ATG) for release detection.
3. On April 17, 2002, Department staff conducted a routine UST inspection. During the inspection, several deficiencies were noted at the site. These deficiencies were addressed in Administrative Order 2002-UT-41 issued December 31, 2002.
4. On January 11, 2005, Department staff conducted a routine UST inspection. Records were not available onsite. On January 18, 2005, Department staff sent a correspondence to Mr. Whitehead detailing the results of the January 11, 2005 compliance UST inspection. The notice required Mr. Whitehead to provide release detection records for the last 12 months and a copy of the current pollution liability insurance certificate. The notice requested documentation be submitted to the Department field office by February 15, 2005.
6. On February 14, 2005, the Department received a copy of certificate of insurance from Great American E & S Insurance Company for Whitehead Farms Construction, effective from January 10, 2005 to January 10, 2006. Mr. Whitehead also submitted release detection records in response to the January 11, 2005 inspection. The ATG release detection records for at least eight of the last 12 months were either invalid due to product levels below the minimum 50% required to produce a valid test or the tests were not run at all due to low product levels.
7. On March 4, 2005, the Department sent Mr. Whitehead a Notice of Violation informing him that the failure to conduct monthly ATG release detection in accordance with the minimum standards required by the ATG third party certification constitutes a violation of Department rules. The notice and further telephone conversations explained that the rules require that the ATG test meet certain minimum product levels requirements and Mr. Whitehead must either fill the tanks to the minimum level, obtain an upgrade that would allow tests at a lower level or use an alternative leak detection method such as statistical inventory reconciliation.
8. On March 11, 2005, the Department sent Mr. Whitehead correspondence explaining the monthly release detection requirements, annual overfill alarm test requirements, and requirement to conduct a three year line tightness test on his suction piping.

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9. The Department field office conducted a routine inspection of the facility on February 24, 2006. The Department issued a notice of violation and sent a copy of the inspection report addressed at the business office, 2468 300th Ave., Sidney, Iowa. The notice stated that there appeared to have been a spill that had not been timely reported as required by law. The notice required submittal of 12 months of release detection records, the last three-year cathodic protection test results and proof of financial responsibility by April 1, 2006 since records were not available onsite. The 2005 inspection established that the most recent cathodic protection test was conducted January 15, 2003; and therefore, the next test was due to be completed no later than January 15, 2006. The inspector also noted evidence of an overfill around the UST system due to apparent overfill which appeared to have not been cleaned up.

10. Mr. Whitehead contacted the Department field office on March 4, 2006. Department records indicated that Mr. Whitehead reported that the spill had occurred about a month prior but could not identify the day. He claimed the spill was about 5-10 gallons of diesel fuel that occurred as the result of an overfill after the distributor had shut off the flow. The Department report did not indicate that any cleanup had taken place. In a telephone conversation with a Department attorney on January 19, 2007, Mr. Whitehead stated that he observed the overfill which occurred on a Friday evening about 7:00 PM. He stated he tried to get the depositor to shut off but the depositor insisted on unloading as much fuel as possible. Mr. Whitehead stated the overfill alarm did go off but on 10-20 gallons "bubbled" out of the vertical vent pipe. He stated that he cleaned up the affected soils on the following Monday with a "skid loader" and shovels digging down about 2 feet, sped the soil on his farm and back filled with clean soil. This version of the facts is not entirely consistent with observations of the field office inspector who reported observing stained soils around the vent pipe.

11. Mr. Whitehead failed to provide the release detection records and cathodic protection records as requested by April 1, 2006. After issuance of a draft consent order dated January 12, 2007, Mr. Whitehead contacted the Department legal staff and provided (1) documentation of a 3-year cathodic protection test conducted on March 3, 2006; (2) documentation that the continuous leak detection ATG upgrade (set up to test at 30% capacity) was installed on May 25, 2006; (3) thirty-day cathodic protection monitoring results from February 2005 through December 2006; and (4) monthly ATG leak detection results from December 2005 to December 2006, seven months of which did not have valid results apparently because the ATG was not correctly programmed. Mr. Whitehead claimed the ATG installer was supposed to have sent this documentation after the May 2006 installation. He also claimed that he had sent the corrosion protection and release detection records to the Department but the Department has no record of receiving them.

12. Mr. Whitehead has had the ATG reprogrammed to perform leak detection at the minimum level required by the manufacturer to run a valid test.

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IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471 - 455B.479) establishes the (UST) program. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules in Chapters 567 I.A.C. 135 and 136.
2. Iowa Code section 455B.471(6) defines "owner" of underground storage tanks. Larry Whitehead is an owner as defined and responsible for compliance with the terms of this order.
3. Iowa Code section 455B.471(5) defines "operator" of underground storage tanks. Larry Whitehead is an operator as defined and responsible for compliance with the terms of this order.
4. Petroleum or its constituent parts is a regulated substance as defined in Iowa Code section 455B.471(8).
5. Pursuant to 567 I.A.C. 135.5(1), owners and operators of new and existing UST systems must provide a method or combination of methods of release detection that (1) can detect a release from any portion of the tank and the connected underground piping that routinely contains product, (2) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and (3) meets the performance requirements in 135.5(4) or 135.5(5). Mr. Whitehead failed to conduct monthly leak detection at fill levels sufficient to meet manufacturer's minimum levels and at levels at which the USTS are routinely filled as determined by the January 2005 inspection. He also failed to provide documentation of 12 months of release detection as the result of the February 2006 inspection and therefore, until he does, it is assumed proper release detection was not performed.
6. Pursuant to 567 I.A.C. 135.5(4)(d) equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements: the automatic product level monitor test can detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product and the inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of 135.5(4)"a."
7. Pursuant to 567 I.A.C. 135.4(5) owners and operators of UST systems must cooperate fully with inspections, including requests for document monitoring by the owner or operator. Owners and operators must maintain the following records:
 - a. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used. (135.4(5)"b"(1)).

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- b. Records of tank and piping construction sufficient to establish compliance with corrosion protection rules and documentation of operation of applicable corrosion protection equipment. (135.4(5)"b"(2)).
- c. Documentation of UST system repairs. (135.4(5)"b"(3)).
- d. Recent compliance with leak detection requirements. (135.4(5)"b"(4)).
- e. Documentation of compliance with UST closure rules. (135.4(5)"b"(5)).
- f. Proof of financial responsibility. (136.20).

8. Mr. Whitehead failed to produce and maintain leak detection records for the period preceding the January 2005 inspection. The Department has no record that he timely submitted twelve months of leak detection records as required by the February 2006 inspection. Mr. Whitehead has provided release detection records from December 2005 through January 2007.

9. Department records have no evidence that Mr. Whitehead timely submitted requested documentation of the 3-year cathodic protection test which was conducted March 22, 2006. He did provide this documentation after receipt of a draft consent order in January 2007. The 3-year cathodic protection test was due to be completed January 15, 2007.

10. Department rule 567 I.A.C. 135.6(4) requires that any aboveground release be reported to the Department within 24 hours or 6 hours if it constitutes a "hazardous condition". If the aboveground release is less than 25 gallons and is immediately contained and cleaned up, the release need not be reported. Mr. Whitehead has acknowledged an aboveground release but claims it was less than 25 gallons and was cleaned up within three days of the occurrence. The Department inspector observed evidence of staining which is not entirely consistent with this version of the facts. The Department is not treating this spill as a reporting violation.

V. ORDER

WHEREFORE, Larry Whitehead agrees to the following:

- 1. Pay to the order of the "Iowa Department of Natural Resources" a penalty of \$2,500. Payment shall be made in four installments of \$625 due on July 2, 2007, September 3, 2007, November 5, 2007 and the final payment no later than December 31, 2007.
- 2. Submit a valid monthly ATG leak test result to the Department field office in Atlantic no later than 5 business days following the end of each month. Reports shall be submitted through December 2007.

VI. PENALTY

- 1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5000.00 per day for the violations as described in this order.

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2. Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule for assessment of administrative penalties up to \$10,000.00. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See Chapter 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is through a negotiated Administrative Consent Order with a penalty. The Department and Mr. Whitehead have agreed to a penalty assessment of \$2,500.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.476, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This administrative consent order is entered into knowingly by and with the consent of Larry Whitehead. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this consent order may result in the imposition of further administrative enforcement and assessment of penalties or referral to the Attorney General to obtain appropriate relief in Iowa District Court pursuant to Iowa Code sections 455B.476(3) and 455B.477. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of June, 2007.



LARRY WHITEHEAD

Dated this 13 day of June, 2007.

UST No. 198610101, Field Office #4, E. Douskey, D. Wernson, VC.